

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

P.G.,

Petitioner,

v.

THE SUPERIOR COURT OF KERN COUNTY,

Respondent;

KERN COUNTY DEPARTMENT OF HUMAN
SERVICES,

Real Party in Interest.

F072757

(Kern Super. Ct. No. JD133449)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. William D. Palmer, Judge.

P.G., in pro. per., for Petitioner.

No appearance for Respondent.

Theresa A. Goldner, County Counsel, and Kelley D. Scott, Deputy County Counsel, for Real Party in Interest.

-ooOoo-

* Before Gomes, Acting P.J., Peña, J. and Franson, J.

P.G. (mother), in propria persona, seeks an extraordinary writ directing the juvenile court to vacate its order issued at a contested dispositional hearing denying her reunification services and setting a Welfare and Institutions Code section 366.26¹ hearing as to her three-year-old daughter, L.G. We deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

In September 2014, then two-year-old L.G. was taken into protective custody along with her four-year-old half-brother (“the brother”) by the Kern County Department of Human Services (department) after mother assaulted them both. Mother punched the brother in the chest, pushed him against a couch and punched him five or six times in the ribs. After he fell to the ground and, while he was lying on his side, mother kicked him in the back. When he got up, she punched him on the nose several times and told him she was going to kill him if he did not stop. Mother then grabbed L.G. by the front of her shirt and punched her four to five times on the left side of her torso. The children were placed in foster care and mother was arrested and charged with felony child abuse and corporal injury to a child.

Over the next several months, mother was found not competent to stand trial and committed to Patton State Hospital for a minimum of three years. The juvenile court appointed a guardian ad litem for her, exercised its dependency jurisdiction over the children and appointed Dr. Thomas Middleton to evaluate mother’s ability to benefit from reunification services.

Dr. Middleton found that mother had a significant mental disorder in the form of bipolar disorder but was stabilized on medication. He opined that she could meaningfully participate in services but would need ongoing mental health counseling. Dr. Middleton subsequently visited mother at her place of incarceration and changed his opinion.

¹ All further statutory references are to the Welfare and Institutions Code.

In July 2015, the juvenile court appointed Dr. Michael Musacco to conduct a second evaluation. Dr. Musacco confirmed Dr. Middleton's opinion that mother had a mental disability (bipolar disorder) but disagreed that it rendered her incapable of benefitting from reunification services. Dr. Musacco recommended the juvenile court require mother to comply with psychiatric treatment including medication management, mental health case management services and child abuse and neglect classes.

In its report for the dispositional hearing, the department recommended the juvenile court deny mother reunification services under section 361.5, subdivision (e)(1) because she was incarcerated and it would be detrimental to L.G.² The department informed the court that mother was placed in a unit at Patton State Hospital where the primary focus was to help her become competent to stand trial. Consequently, reunification services such as parenting were not available to her on that unit. The social worker assigned to mother at the hospital was asked in November 2015 when mother would be found competent. The social worker projected she could resume competency within two to three months if she continued progressing.

In November 2015, the juvenile court conducted the dispositional hearing and the parties argued their cases without presenting evidence. The juvenile court denied mother reunification services under section 361.5, subdivision (e)(1), reasoning that she would not be found competent and able to reunify with L.G. within the statutory timeframe for reunification which expired in March 2016. The court set a section 366.26 hearing.

This petition ensued.

² The department also recommended the juvenile court deny mother reunification services under section 361.5, subdivision (b)(2) because of her mental disability. However, the department withdrew that recommendation at the dispositional hearing.

DISCUSSION

Section 361.5, subdivision (e)(1) requires the juvenile court to provide an incarcerated parent reunification services unless the court finds by clear and convincing evidence that services would be detrimental to the child. In determining detriment, the statute requires the juvenile court to consider the age of the child, the degree of parent-child bonding, the length of the sentence, the length and nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and the likelihood of the parent's discharge from incarceration within the reunification time limitations set forth in section 361.5, subdivision (a). Section 361.5, subdivision (a) provides that reunification services shall not exceed 18 months from the time the child was originally removed from parental custody. (§ 361.5, subd. (a)(3).) Since L.G. was originally removed from mother's custody in September 2014, reunification services could not extend beyond March 2016.

Mother contends there was insufficient evidence to support a finding that providing her services would be detrimental to L.G. Specifically, she argues, the evidence on which the court relied, i.e. her inability to reunify by March 2016, was speculative. She further argues there was evidence to support a contrary finding, notably, her motivation to participate in services and L.G.'s strong bond to her.

On a challenge to the juvenile court's order denying reunification services, we review the record to determine whether substantial evidence supports the finding and order that the juvenile court actually made, not whether it supports a contrary finding and order. (*In re Brian M.* (2000) 82 Cal.App.4th 1398, 1401; *Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 688-689.) In this case, we conclude such evidence exists.

The juvenile court's conclusion that mother would not be able to reunify by March 2016 was fully supported by the evidence. At best, mother would be found competent by January 2016. However, she was still facing felony charges with the potential for further

incarceration. Further, the nature of mother's crime (child abuse) was compelling for a finding of detriment.

We conclude for the reasons stated above that substantial evidence supports the juvenile court's order denying mother reunification services and deny the petition.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final as to this court.